

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. CWA-08-2003-0087
)	
Missouri River Energy Services)	
123 4 th Street, NE)	COMPLAINT AND EXPEDITED
Watertown, South Dakota)	SETTLEMENT AGREEMENT
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”) or (“Complainant”), and Missouri River Energy Services (hereinafter “Respondent”) by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6).

2. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), as amended by the Oil Pollution Act Amendments of 1990, 33 U.S.C. § 2701 et seq. promulgated regulations at 40 CFR Part 112, which govern this matter.

3. This Complaint and Expedited Settlement Agreement (“CESA”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice.

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

5. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CESA.

6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CESA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

7. This CESA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

8. This CESA contains all terms of the settlement agreed to by the parties.

9. Respondent is a "person" within the meaning of section 311(a)(7), 33 U.S.C. §1321(a)(7) of the Act.

10. Respondent is an "owner and operator" of an "onshore facility" as those terms are defined in sections 311(a)(6) and (10), respectfully, 33 U.S.C. §§1321(a)(6) and (10) of the Act.

11. The undersigned EPA, Region 8 officials issue this CESA under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), which authorizes EPA to bring an action for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the Act.

B. ALLEGED VIOLATIONS

1. The Respondent owns and/or operates a bulk fuel storage facility located at 123 4th Street, NE, Watertown, South Dakota (hereinafter "the facility").

2. On September 19, 2001, Paul Schnitz, an authorized EPA inspector, inspected the facility to ascertain compliance with the Spill Prevention Control and Countermeasure (SPCC) regulations found at 40 CFR Part 112.

3. EPA determined that Respondent failed to prepare and implement a written SPCC Plan for the facility in accordance with the regulations at 40 CFR §112.7(e) and required by 40 CFR §112.3(a).

4. Respondent's failure to comply with regulations at 40 C.F.R. Part 112 setting forth the requirements for preparation and implementation of SPCC Plans constitutes a violation of CWA § 311(b)(6)(A), 33 U.S.C. §1321(b)(6)(A).

5. Pursuant to 33 U.S.C. § 1321(b)(6)(B)(i), Respondent is subject to a civil penalty in an amount up to \$10,000 per violation. This penalty has been increased to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, promulgated at 40 C.F.R. Part 19, for violations occurring after January 30, 1997, which includes the violations alleged herein.

6. Upon consideration of the penalty assessment criteria found in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), in addition to such other factors as justice may require, the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts to mitigate the effects of the discharge, the economic impact of the penalty of the violator, and upon consideration of the entire record herein, EPA offers this CESA under its expedited enforcement procedures in order to settle the violations at the facility based upon the findings noted above, for the total civil penalty amount of seven thousand nine hundred three dollars (**\$7903.00**).

C. CIVIL PENALTY

1. Pursuant to section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), EPA has determined that an appropriate civil penalty to settle this action is the amount of seven thousand nine hundred three dollars (**\$7903.00**).

2. Within thirty days (30) of receipt of the Final Order issued by the Regional Judicial Officer, Respondents shall pay the agreed upon civil penalty in the amount seven thousand nine hundred three dollars (**\$7903.00**) by remitting a cashier's or certified check **payable to "Oil Spill Liability Trust Fund"**, with the docket number and Respondent's name written on the check, to:

Jane Nakad (8ENF-T)
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

A copy of the transmittal of payment shall be sent simultaneously to the following address:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

(and)

Brenda L. Morris
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Co 80202-2466

1. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

4 C.F.R. §§ 102.13(d) and (e).

D. SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

1. The parties agree that Respondent's penalty should be mitigated by a Supplemental Environmental Project ("SEP") which is defined in Exhibit A to this CESA.

2. Within thirty days (30) days of receipt of a signed Final Order in this matter, the Respondent agrees to undertake the SEP which includes purchasing emergency response equipment for the Watertown, South Dakota Fire Department.

3. Respondent agrees to complete the SEP by no later than December 1, 2003, and expend a total of not less than eighteen thousand three hundred dollars (\$18,300.00) on the SEP.

4. Respondent hereby certifies that, as of the date of this CESA, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

5. Whether Respondent has complied with the terms of this CESA, including the purchasing of the emergency response equipment as detailed in Exhibit A shall be the sole determination of EPA.

6. Respondent shall provide Complainant with a SEP Completion Report by no later than December 15, 2003, and mail it to: Brenda L. Morris, Enforcement Attorney, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, which shall include the itemized costs of the SEP with copies of purchase orders and receipts or canceled checks evidencing the total expenditure of the SEP of \$18,300.00.

7. Respondent shall maintain legible copies of documentation of any and all documents or reports submitted to EPA pursuant to this CESA for a period of not less than three years, and Respondent shall provide the documentation to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CESA, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

8. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for alleged violations of the Clean Water Act, as amended by the Oil Pollution Act."

9. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible expense for purposes of Federal taxes.

E. TERMS AND CONDITIONS

1. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

2. Failure by Respondent to comply with any of the terms of this CESA shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

3. Nothing in this CESA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CESA.

4. Each undersigned representative of the parties to this CESA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CESA and to execute and legally bind that party to this CESA.

5. The parties agree to submit this CESA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

6. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CESA.

7. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CESA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 8/26/03

By: **SIGNED**
Elisabeth Evans
Director
Technical Enforcement Program

Date: 8/22/03

By: **David J. Janik**
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 8/20/03

By: **SIGNED**
Brenda L. Morris, Attorney
EPA Region 8
999 18th Street, Suite 300-ENF-L
Denver, Colorado 80202-2466

**MISSOURI RIVER ENERGY SERVICES,
Respondent.**

Date: 8/15/03

By: **Raymond J. Wahle**
(Signature of Authorized Agent)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **MISSOURI RIVER ENERGY SERVICES, DOCKET NO.: CWA-08-2003-0087** was filed with the Regional Hearing Clerk on August 27, 2003

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on August 27, 2003, to:

Mr. Richard G. Kozlowski, Attorney
VanNess Feldman, Attorneys at Law
1050 Thomas Jefferson Street, N.W.
Washington, DC 20007-3877

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

August 27, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK'S OFFICE.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON AUGUST 27, 2003.